165-194

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 352.

THE WESTERN UNION TELEGRAPH COMPANY, APPELLANT,

vs.

EBENEZER W. POE, AUDITOR OF THE STATE OF OHIO, ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

FILED SEPTEMBER 30, 1895.

(16,045.)

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1 *Transcript of Record.*

UNITED STATES OF AMERICA,
Southern District of Ohio, Eastern Division, } ss:

At a stated term of the circuit court of the United States of America, within and for the eastern division of the southern district of Ohio, in the sixth judicial circuit of the United States of America, begun and had in the court-rooms at the city of Columbus, Ohio, in said district, on the first Tuesday of December, being also the fourth day of that month, in the year of our Lord one thousand eight hundred and ninety-four, and of the Independence of the United States of America the one hundred and nineteenth.

Present: The Honorable William H. Taft, circuit judge.

Among the proceedings had were the following, to wit:

THE WESTERN UNION TELEGRAPH COMPANY, a Corporation Organized and Existing under the Laws of New York, Complainant,
vs.
EBENEZER W. POE, Auditor of the State of Ohio; John K. Richards, Attorney General of the State of Ohio, and William T. Cope, Treasurer of the State of Ohio, Defendants. } In Chancery.

Be it remembered, that heretofore, to wit, on the 22nd day of November in the year of our Lord one thousand eight hundred and ninety-three, came the complainant by its solicitors and filed in the clerk's office of said court, its certain bill of complaint, against the defendants herein; said bill of complaint is clothed in the words and figures following, to wit:

2 *Bill of Complaint.*

Circuit Court of the United States for the Southern District of Ohio, Eastern Division.

THE WESTERN UNION TELEGRAPH COMPANY, a Corporation Organized and Existing under the Laws of New York, Complainant,
vs.
EBENEZER W. POE, Auditor of the State of Ohio; John K. Richards, Attorney General of the State of Ohio, and William T. Cope, Treasurer of the State of Ohio, Defendants. } Bill of Complaint. In Equity.

1. Humbly complaining, your orator showeth unto the court that it is a corporatien, organized and existing as a telegraph company, under the laws of the State of New York, with its principal office in said State, and that it is a citizen thereof; that the defendants are

citizens and residents of the State of Ohio, residing in the southern district of said State; that the defendant, Ebenezer W. Poe, is auditor of the State of Ohio; that the defendant, John K. Richards, is attorney general of said State, and the defendant, William T. Cope, is treasurer thereof.

2. Your orator further shows unto the court that it owns and operates lines of telegraph in nearly all of the States of the Union, including the State of Ohio, said lines consisting of poles, with cross-arms, supporting suitable wires, for the transmission of telegraphic messages by means of electricity, and it employs many thousands of men, as officers and operators, clerks and messengers, together with those who build, repair and maintain its lines, in all of the States aforesaid.

3. Your orator further shows that on April 27, 1893, the General Assembly of the State of Ohio passed a bill for the taxation of express, telegraph and telephone companies doing business in the State of Ohio, by the terms of which the auditor, attorney general and treasurer of said State are designated as "a board of appraisers and assessors for such express, telegraph and telephone com-
3 panies" and the auditor of said State is designated as president of said board. A true copy of said bill is herewith filed, marked Exhibit "A." It is claimed by the said defendants that the said bill became a law on said date, and that it is now in full force and that they constitute a board of appraisers and assessors for express, telegraph and telephone companies, in accordance with its said terms, and they are now acting as such. Said bill, by its terms, requires the said board to value and assess the property of said companies in the following manner, to wit:

"SEC. 2778*a*. Every express, telegraph and telephone company embraced in section 2777, whether chartered by the laws of this State, or any other State or country, doing business in this State, shall, annually, between the first and tenth day of May return to the auditor of State, under the oath of its treasurer, the amount of its capital stock, its place of business, the par value and market value (or if there be no market value then the actual value) of its shares at the time of said return. The return shall also contain a statement in detail, of the entire real and personal property of said company and where located, and the value thereof as assessed for taxation; and telegraph and telephone companies shall, in addition thereto, return the whole length of their lines, and the length of so much of their lines as is without and is within the State of Ohio, which lines shall include what said telegraph and telephone companies control and use, under lease or otherwise; and said board of appraisers and assessors shall, in determining the value of the property of said companies in this State, to be taxed within the State and assessed as herein provided, be guided by the value of said property as determined by the value of the entire capital stock of said company, and such other evidence and rules as will enable said board to arrive at the true value in money of the entire property of said companies within the State of Ohio in the proportion which the same bears to the entire property of said company as deter-

mined by the value of the capital stock thereof, and the other evidence and rules as aforesaid. Express companies shall, in making said return, include therein, as a part thereof, a statement of their entire gross receipts for the year ending the first day of May, of the business done within the State of Ohio, giving the receipts of each office in said State and location thereof for said year."

4. Your orator further shows unto the court that, at the
4 request of said Ebenezer W. Poe, auditor of State, but, denying his right or the right of said board, to require it to make any report or statement, it made a statement to him, showing the amount of its capital stock, and the market value thereof, so far as said market value could be shown, together with a statement of the location and value of its property in the State of Ohio; the number of miles of telegraph lines owned by it in Ohio, and the total length of its lines everywhere, (a copy of which report is herewith attached, marked Exhibit "B"). Acting upon the information thus furnished and under the requirements of the statute, and not in the exercise of their individual judgment of the valuation of the property of your orator, said defendants, claiming to act as a board of appraisers, under the said act of April 27, 1893, made an appraisement, fixing the amount to be assessed against your orator for taxation in Ohio, at the sum of $2,011,076.45 wrongfully pretending that said sum is named as being the value of its property in the State of Ohio, and unless restrained by the order of this court, the said alleged board will forthwith certify the said assessment, in the proportions named in said bill, to the auditors of eighty-seven counties of the State of Ohio, who will, on receipt thereof, certify the same to the several treasurers of each of said counties for collection. The rate of taxation in Ohio for the year 1893 varies, according to the county, from two and one-half to three per cent., so that the aggregate assessment against your orator upon said illegal and excessive valuation will amount to between $50,000 and $60,000, and in several counties of the State, not only the assessment, but the difference between the assessment under said law and an assessment upon a true and lawful valuation of your orator's property will exceed $2,000. Your orator says that in truth, the entire value of its property in the State of Ohio, at all times in the year 1893, prior to and subsequent to May 1, 1893, does not exceed the sum of $647,000, and estimated as all other property is for taxation in said State, would fall much below said sum.

5. Your orator further says that it is owner of lines of Atlantic cable extending to Cuba and to England and connecting in England with lines of other companies extending to all parts of Europe, and lines in Canada; the total number of miles of line owned or operated by it being 189,576, including the whole number of miles in the State of Ohio, to wit, 8,272 miles. Your orator states, however, that the cash value of its property cannot be ascertained, even approximately, by applying the proportion which its lines in Ohio bear to the whole number of
5 miles owned or operated by it, upon a valuation of all the shares of its capital stock, because such valuation includes

elements of value not existing within the State of Ohio, and not taxable within said State, and some of which are not taxable at all, and because the lines owned and operated by it are not of uniform value per mile, either as to gross or net income earned upon the various lines, or as to cost of construction and maintenance. Your orator owns thousands of miles of ocean cable which cost about $4,000 per mile, while the ordinary cost of the lines in Ohio is about $103.60 per mile. The cost of the company's lines in the more densely settled portions of the country, as in Massachusetts, New York, Pennsylvania and New Jersey, where also the company's trunk lines are larger, is very much greater than in Ohio. The income arising from the conduct of your orator's business is much greater, in many of the States, per mile of line, than in the State of Ohio, and the average income per mile in the entire system is very much greater than that of the lines in Ohio.

6. Your orator further shows that the market price of its stock affords no fair, reasonable or just method of forming an opinion as to the value of its property, or, of fixing a basis of value for the taxation thereof, inasmuch as the said market price is speculative and variable and is dependent upon financial and other conditions not at all connected with your orator, its business or its property while the actual value of its shares is made up of property of various kinds, in various States and of valuable contracts with railroad companies and other companies and individuals; of franchises granted by the Government of the United States, by the act of July 24th, 1866; of franchises granted by other States and municipalities in them and by foreign governments; of patent rights; of business experience, good will and skill employed in the prosecution of its business; of investments in bonds and stocks of other corporations aggregating $7,633,230.12 and large investments in real estate in New York city and in Chicago, and in other cities and towns outside of Ohio, aggregating more than five millions of dollars in value.

7. Your orator further shows unto the court that if the appraisement made by said board shall stand, and the assessment based thereon shall be made and enforced, the tax so levied would amount to about thirty per centum of its gross receipts in Ohio, from all its business in Ohio, including interstate commerce and will equal and probably exceed its net revenue from all of said business an unheard-of rate of taxation, and substantially destructive of its business in said State. And your orator here distinctly alleges that while by the terms of said law the appraisement made by said board is designated as an appraisement of the value of the property of express, telegraph and telephone companies in the State of Ohio, it is not such in fact, but is, in truth, an attempt to levy a tax against such companies including your orator, for the privilege of doing business in the State of Ohio; that the property of all individuals in Ohio, and of all companies in said State, other than express, telegraph and telephone companies, is assessed in said State by ascertaining its true value, by uniform rule, as required by the constitution of said State, and that the property of the said com-

panies should be assessed in the same manner, that is to say, by a verified return of such property in each county in which any part thereof is situated, such return setting forth the designation, amount and value of said property; that the property of your orator in said State is of the simplest character, plainly open to observation and investigation as to its value, consisting only of poles, wires, office furniture and instruments used in telegraphy, and there is no just or lawful reason for assessing its property in any mode or manner other than that employed generally under the laws of said State, and your orator further says that an attempt to fix a value upon its poles, wires, instruments and office furniture, by consideration of the property which it owns and the advantages which it enjoys and the business which it does in other States and countries, is unjust, unfair, oppressive and is not permissible under the constitution of Ohio, and that of the United States.

8. Your orator further shows unto the court that on the 8th day of June, 1867, it formerly accepted the provisions of the act of Congress of July 24, 1866, now constituting sections 5263 to 5268, inclusive, of the Revised Statutes of the United States whereby it became and now is an agent of the Government of the United States for the transmission of intelligence by electricity, and that all of its lines in Ohio are constructed upon post-roads; and that much of the greater part of its business in Ohio is that of transmitting messages from points in Ohio to points outside of said State, and from points outside of said State to points within the same, and is therefore, interstate commerce, and the imposition of the tax attempted to be imposed by said act of April 27, 1893, and enforced by said defendants, would be a serious interference with and hin-
7 drance to, the performance of the duties of your orator towards the Government and people of the United States.

9. Complainant further shows unto the court that the said alleged law is a special law requiring a mode of assessment for the property of telegraph, telephone and express companies alone, and that this is in violation of the constitution of the State of Ohio, which requires that all laws for the assessment and collection of taxes for general revenue shall be by general laws, uniform in their operation throughout the State.

10. Complainant further says, that, by the laws of Ohio, existing long prior to April, 1893, and still in force, provision is made for the valuation of real and personal property by assessors, who view the real estate to be valued, and assessors of personalty, to whom the owner makes a written statement, under oath, setting forth the nature and extent and value of the specific property to be assessed and all said returns are submitted to proper boards of equalization of assessments and said laws require that the tax-payer shall have due notice of any assessment made against him or his property, and the right to appear before such boards and object to any such valuation and assessment, and to be heard, in opposition to the amount thereof, and said boards are authorized to reduce excessive assessments upon both real and personal property. And yet the

complainant says, that the said alleged law of April 27th, 1893, makes no provisions for a statement by telegraph, telephone or express companies of the value of their property, and makes no provision for any hearing, by any board or body, or any judicial authority, touching the amount assessed against them on the amount of such property, but requires the said board of appraisers and assessors for express, telegraph and telephone companies, to fix the value of said property in the manner and upon the basis set forth in said pretended law of April 27, 1893, and to certify the same forthwith to the various auditors of the several counties in which said companies do business, including counties through which the lines of said companies run, and in some instances, counties in which express companies may have no property.

Your orator further says that by reason of the premises, the enforcement of such assessments against your orator would be a taking of its property without due process of law, and would deprive it and all telephone, telegraph and express companies of the equal protection of the laws, and said law is, therefore, unconstitutional and void, by reasons of the provisions of the Constitution of the United States and that of the State of Ohio.

11. Your orator further states that the mode of assessment attempted to be established by said law is unconstitutional and void, as it does not require valuation of the property of telephone, telegraph and express companies according to its true value in money, but according to the opinion of the said commission as to the value of the capital stock of such companies, which is determined by the diligence, fidelity and skill with which the business of said companies is conducted and the property of said companies in many States and by the general financial conditions existing in the country.

To the end, therefore, that the complainant may not be subjected to a multiplicity of suits, which would otherwise be brought against it for the recovery of said assessments, to wit: a suit in each of the eighty-seven counties in which it does business in Ohio, and that your orator may be spared irreparable injury and that said defendants may, if they can, show why your orator should not have the relief hereby prayed, and may, accordingly, to the best of their knowledge, information and belief, full, true, direct and perfect answer make to all the matters herein set forth, may it please your honors to grant unto your orator the writ of subpœna issued out of this court to the said defendants, commanding them to make such answer, but not under oath, and that, until the filing of such answer, and until the final hearing of this cause, there shall be granted unto your orator, and against the said defendants, a provisional injunction, restraining them from certifying the said assessment to the auditors of the various counties in which your orator does business, or any of them; and that, upon the said final hearing the said injunction shall be made perpetual, and for all other necessary and proper relief.

BROWN & WELLS,
RAMSEY, MAXWELL & RAMSEY,
Solicitors for Complainant.

Bill is endorsed as follows:

Let a preliminary restraining order be issued according to the prayer of the bill; to remain in force until the hearing and
9 disposition of a motion for a temporary injunction which shall be filed by complainant within two days, and a copy forthwith thereafter furnished to each of the defendants.

GEO. R. SAGE,
U. S. District Judge.

Nov. 22, '93—3 o'c. p. m.

And afterwards, to wit, on the 22nd day of November, A. D. 1893, the following Exhibit B was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Copy.

EXHIBIT "B."

CINCINNATI, OHIO, *June* 10, 1893.

To the auditor of state of the State of Ohio:

The Western Union Telegraph Company, a corporation organized under the laws of New York, but owning and operating lines of telegraph in Ohio, respectfully calls the attention of the auditor, and the board of appraisers and assessors, to the fact that the amendment to sections numbers 2777–'8–'9 and 2780 of the Revised Statutes of Ohio, passed April 27, 1893, as invalid and void under the constitution of Ohio, and, that of the United States, and that the following report is submitted, as requested by the auditor, only out of respect to said auditor and said board.

I. N. MILLER,
Sup't Western Union Tel. Co., 7th Dist., C. D.

June 10, 1893.

I. N. MILLER,
Sup't, Cincinnati, O.

1893.

Annual statement of the property of the Western Union Telegraph Company, corporation created under the laws of the State of New York, but subject to taxation in the State of Ohio, makes the following report as required by section 2777–'8–'9–2780 of the Revised Statutes as amended and supplemented by an act passed April 27, 1893, of facts existing on the last day of May, 1893.

On the first day of May, 1893, said corporation had its principal place of business at No. 195 Broadway, New York city, but had a principal office for the State of Ohio, at northwest corner of Fourth and Vine streets, in the city of Cincinnati.

10 On the first day of May 1893, the capital stock of the company issued and then outstanding was $94,000,820, in shares of $100 each.

On the first day of May, 1893, there was no market value for all the shares of the company's stock. The total number which was sold or speculated in on that day on the New York stock exchange, amounted to 838,432, at prices ranging from $86\frac{5}{8}$ to $88\frac{1}{8}$ per cent.

It would have been impossible on that day to sell all the shares of stock of said company for such prices or any other approximating thereto.

Whether the prices paid on May 1st, 1893, were the fair actual value of the shares it is impossible for the company's officer to state. Such stock-exchange prices of the shares do not fairly represent the actual value of the company's property. Such exchange prices are largely influenced by speculation based upon elements entirely outside of the company's property, earnings or future prospects; for instance, upon national politics; upon national financial policy; upon shipments of gold abroad; upon the stringency or *each* of the local money market; upon the financial necessities of holders of the company's stock; even upon rumors of insolvency of prominent financiers who may or may not be holders of the company's shares, upon rapid declines in the market prices of shares of other companies and many other considerations.

During the past twelve years in which the company has regularly paid a dividend of 5 % per annum and in which its surplus earnings have not materially altered from year to year and in which there was a steady increase in value of the company's actual property, the stock-exchange prices have varied as follows:

1893	$80\frac{1}{4}$	to	101
1892	82	"	$100\frac{3}{8}$
1891	76	"	$85\frac{1}{2}$
1890	$71\frac{3}{4}$	"	87
1889	$81\frac{5}{8}$	"	$88\frac{3}{4}$
1888	$70\frac{3}{8}$	"	$86\frac{3}{4}$
1887	$67\frac{1}{2}$	"	$81\frac{7}{8}$
1886	$60\frac{1}{2}$	"	$80\frac{1}{2}$
1885	$53\frac{1}{2}$	"	$81\frac{3}{8}$
1884	49	"	$78\frac{1}{2}$
1883	$71\frac{3}{4}$	"	$88\frac{1}{4}$
1882	$76\frac{1}{8}$	"	$93\frac{3}{8}$

This company declares that stock exchange prices are no in-
11 dication of the value of the company's property and that any price of the shares, whether market value or actual value, includes a consideration of the company's franchises owned or exercised by it, granted by the State of New York, by the United States of America, by Canada, by Great Britain, by Cuba, and by other States and countries, by a consideration of the company's good will and patent rights, its probable future earnings, its management, its contracts or other relations to powerful railroad and telephone and cable companies—each and all of very great value to the company and costing it great sums, none of which elements is the subject of taxation by the State of Ohio—as well as a consideration of the

actual value of its property, real or personal, which is taxable by the State of Ohio—that in estimating such market or actual value of shares, the value of such real or personal property cannot be distinguished from the value of such intangible franchises, rights, contracts and good will—that any attempt upon the part of the State of Ohio to value the company's property upon the basis of the market or actual value of the shares including a value of the said franchises, rights, contracts and good will which are beyond the jurisdiction of the State and any taxation thereof is therefore null and void.

The whole length of lines of this company, whether owned, leased or controlled through ownership of shares of other companies, including those extending into and through Canada and under the high seas to Cuba and England was 189,576 miles and the length of such lines in the State of Ohio was 8,272 miles.

The company represents, however, that a fair valuation of its property in the State of Ohio, which consists entirely of its telegraph lines and appurtenances, cannot be ascertained, even approximately by applying the proportion which such mileage of line in Ohio (8,272 miles) bears to the entire mileage of the company (189,576) upon a valuation of all the shares of the company's stock whether such valuation be a stock-exchange value or the actual value of such shares, because such valuation includes elements of value not existing within the State of Ohio or not taxable by it, and because the lines of telegraph possessed by this company are not of uniform value per mile.

The value of the lines of this company with- the State of Ohio, if made upon the basis of the actual cost, less depreciation, will not exceed $646,198, but if it should be made upon the basis of the cost of reproduction of any entirely new line of same extent and location, it would be $1,649,279.10.

12 This is apparent from the following facts:

The standard size of poles in Ohio is 25 feet long and cost delivered in Ohio on the ground from 50 cents to $1.20 according to kind of timber. White cedar largely predominates and costs, as stated above, $1.20. In cities and towns poles ranging from 30 to 55 feet in length are used, but the proportion of long poles compared with those 25 feet long — vary small. A fair average cost of poles would not exceed $1.50 each. The labor required to set them in the ground and attach the cross-arms thereto average- $1.00 each pole (33 to the mile).

The standard size No. 8 wire weighs 380 lbs. to the mile and costs 4½ cents a pound, making the cost per mile of wire equal $17.10.

The cost for stringing the wire on poles averages $4.00 per mile.

A set of instruments costs $5.50 upon the average.

Upon this basis the full value of the company's plant in Ohio, upon the basis of cost of reconstruction would, if new, be as follows:

8,272 miles of poles at $82.50 per mile	$682,440 00
43,401 miles of wire at $21.10 per mile	915,761 10
2,887 sets of instruments at $5.50	15,878 00
102 offices at $100.00 (office furniture)	10,200 00
Miscellaneous items	25,000 00
Total	$1,649,279 10

This valuation is far in excess of the actual value of the existing plant. The existing lines have been chiefly constructed under contract with railroad companies for joint use, the telegraph company furnishing the material and the railroad company the labor.

As the average life of a telegraph pole is from 12 to 15 years and a large portion of the line in Ohio is old, requiring replacement in a few years at high cost, it is apparent that the present plant is not of the value of a new one. This company has heretofore reported the valuation of the existing plant in Ohio at its actual value, considering deterioration, not including the cost of labor which was furnished by the railroad companies.

While the cost per mile can in the State of Ohio, or in any other one State, be averaged with substantial accuracy because the conditions existing are there substantially uniform, no such rule can apply to the company's lines as a whole. Thousands of miles of line lie in cables under the high seas costing about $4,000.00 per mile; in the more densely settled portions of the country
13 like Massachusetts, New York, Pennsylvania and New Jersey, where also the company's trunk lines are larger, the cost per mile of poles is vastly greater, as it also is per mile of line where laid underground in conduits. In the far West of the United States the necessity to transport poles and wire from the East adds largely to the cost per mile of line and many thousands of miles of line have been built in advance of the railroads and at a great cost for transportation by wagon across the plains and mountains.

Besides the elements of Federal and foreign franchise, contracts, patent rights and business skill entering into the value of the shares of stock as hereinbefore set forth, this company has large investments in bonds and stocks of other corporations, principally telephone companies, and local telegraph companies, of an aggregate value of $7,633,230.12, and large investments in real estate in New York city and Chicago and in other cities and towns in the United States and Canada, the cost of which was $5,013,326.64. Any apportionment to Ohio of its capital stock on the mileage basis will necessarily include the value of shares, bonds, real-estate franchises, contracts and patent rights, all of which are outside the jurisdiction of the State of Ohio.

As further proof that the mileage basis does not correctly indicate the value of the company's property in Ohio, the company shows that while the gross receipts of the company's business throughout its entire system average $32.00 per mile of wire, in Ohio the average is $22.12 per mile of wire, and that the net earn-

ings of the entire system average $10.00 per mile of wire, but in Ohio do not exceed $5.78 per mile of wire.

As further proof to the same end, the company shows that if the entire capital of the company be taken at the stock-exchange price of May 1st, last, 87⅜ per cent., and if the apportionment thereof to the State of Ohio upon the mileage basis be taxed at an average rate of 2 per cent., (which is about the average rate of taxation in Ohio) it would require the company to pay a tax in this State of about $71,700.

As the net earnings of the company from all its business in the State, whether from interstate or local traffic, do not exceed the sum of $250,000. It appears that a tax upon such a basis would nearly equal 30 per cent. of the entire income of the company's property in the State, a rate of taxation unheard of and which is substantially destructive.

14 The company further represents that on June 8th, 1867, it formally accepted the provisions of the act of Congress of July 24, 1866 (now sections 5263 to 5269 of the Revised Statutes of the United States) that all the telegraph lines in the State of Ohio which it owns, leases or operates are constructed upon the railroads, streets and other post-roads of the United States, that by virtue thereof this company is an agent of the Government of the United States in the transmission of intelligence by electricity from points to points within the State of Ohio and from or to points without the State of Ohio, to or from points within the State of Ohio; that the enforcement of the scheme of taxation provided in the law of Ohio passed April 27, 1893, will substantially destroy the value of the property of this company in the State of Ohio, constructed upon such post-roads and operated by this company in the performance of its functions as such agent and thereby prevent it from the due performance of its obligations under said act of Congress.

1893.

Annual statement of the property of the Western Union Telegraph Company. Company —. Subject to taxation in the State of Ohio, as required by sections 2777–'8–'9–2780 of the Revised Statutes, as amended and supplemented by an act passed April 27, 1893, as existing on the 1st day of May, 1893.

AUDITOR OF STATE'S OFFICE, COLUMBUS, OHIO.

To express, telegraph, and telephone companies:

This form is submitted to you for the purpose of procuring property statements from each express, telegraph and telephone company doing business in Ohio. All statements furnished must be on this blank, and the items called for therein must be given in full. This report must be made out and sworn to by the treasurer of such company, and filed in the auditor of State's department on or before May 10th of each year.

Respectfully,

E. W. POE,
Auditor of State.

15 On the first day of May, 1893, said corporation had its place of business at ——.

Its capital stock was..... ..... $
The whole number of its shares was..... .
The par value of each share was..... .... $
The market value of each share was..... $

(If there be no market value, give the actual cash value.)

The taxable value of the real estate and personal property owned by the corporation within the State..... $
Whole length of lines under lease or otherwise.....
Length of lines under lease or otherwise without the State..
Length of lines under lease or otherwise within the State...

Express companies.

The total amount of gross receipts within the State..... $

Schedule B.—Length of lines under lease or otherwise within the State of Ohio, in each township, city, village and special school district, with total for each county.
Schedule B.—Not included in transcript. By order of court.

See final entry, page 84 of Transcript No. 672.

THE STATE OF OHIO, } ss:
Franklin County, }

On the twelfth day of May, A. D. 1893, personally appeared before me the undersigned, I. N. Miller, — in and for said State of Ohio, who, being duly sworn, says that he is the superintendant of the Western Union Telegraph Company, and that the foregoing statement is correctly taken from the books of said company, and is true to the best of his knowledge and belief.

(Signed) I. N. MILLER.

Subscribed and sworn to before me the day and year above written.

[SEAL.] (Signed) JOHN P. DANA,
Deputy Clerk.

16 And afterwards, to wit, on the 22nd day of November, A. D. 1893, there was issued out of the clerk's office of said court the following subpœna in chancery, directed to the marshal of the district and against the defendants herein, said subpœna in chancery is clothed in the words and figures following, to wit:

Subpœna in Chancery.

UNITED STATES OF AMERICA, } ss:
Southern District of Ohio, }

The President of the United States of America to the marshal of the southern district of Ohio, Greeting:

You are hereby commanded to summon Ebenezer W. Poe, auditor of the State of Ohio; John K. Richards, attorney general of the State of Ohio, and William T. Cope, treasurer of the State of Ohio, and citizens of and resident in the State of Ohio, if they be found in your district, to be and appear in the circuit court of the United States for the eastern division of the southern district of Ohio, aforesaid at Columbus, on the first Monday in February next, to answer a certain bill in chancery, filed and exhibited in said court, against them by the Western Union Telegraph Company, a corporation organized and existing under the laws of New York, and citizens of and resident in the State of New York.

Hereof you are not to fail under the penalty of the law thence ensuing. And have you then and there this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the
[SEAL.] United States, this 22d day of November, A. D. 1893, and of the 118th year of the Independence of the United States of America.

Attest: B. R. COWEN, *Clerk.*

MEMORANDUM.—The said defendants are required to enter their appearance in this suit in the clerk's office of said court on or before the first Monday of January, 1894, otherwise the said bill may be taken *pro confesso.*

B. R. COWEN, *Clerk.*

And afterwards, to wit, on the 22nd day of November, A. D. 1893, there was issued out of the clerk's office of said court our cer-
17 tain restraining order, directed to the marshal of the district and against the defendants herein. Said restraining order is clothed in the words and figures following, to wit:

Restraining Order Issued.

THE UNITED STATES OF AMERICA, } ss:
Southern District of Ohio, Eastern Division, }

The President of the United States of America to Ebenezer W. Poe, auditor of the State of Ohio; John K. Richards, attorney general of the State of Ohio, and William T. Cope, treasurer of the State of Ohio, Greeting:

Whereas, the Western Union Telegraph Company, a corporation organized and existing under the laws of New York, and citizen of

the State of New York, has filed on the chancery side of the circuit court of the United States for the eastern division of the southern district of Ohio, a bill against Ebenezer W. Poe, auditor of the State of Ohio; John K. Richards, attorney general of the State of Ohio, and William T. Cope, treasurer of the State of Ohio, and has obtained an allowance for a preliminary restraining order as prayed for in said bill.

Now, therefore, we having regard to the matters in said bill contained, do hereby command and strictly restrain you, the said Ebenezer W. Poe, auditor of the State of Ohio; John K. Richards, attorney general of the State of Ohio, and William T. Cope, treasurer of the State of Ohio, and each of you, from certifying the assessments made by you and each of you against the property of said complainant, to the auditors of the various counties in which the complainant does business, to remain in force until a temporary injunction, which shall be filed by complainant within two days.

Which commands and injunctions you are respectively required to observe and obey.

Hereof fail not, under the penalty of the law thence ensuing.

[SEAL.] Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this 22nd day of November, A. D. 1893, and in the 118th year of the Independence of the United States of America.

B. R. COWEN,
Clerk U. S. Circuit Court, S. D. O.,
By ROB'T C. GEORGI, *Deputy.*

18 And afterwards, to wit, on the 22nd day of November, A. D. 1893, the following motion was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Motion.

United States Circuit Court, Southern District of Ohio, Eastern Division.

THE WESTERN UNION TELEGRAPH COMPANY *vs.* E. W. POE *et al.* } Motion.

Now comes the complainant and moves the court to grant an injunction *pendente lite*, restraining the defendants, their agents and servants, from certifying to the county auditors of the State of Ohio, and auditors of cities and towns in said State, or any of them, an assessment against the complainant, being the assessment set forth in the bill of complaint herein filed.

BROWN & WELLS,
RAMSEY, MAXWELL & RAMSEY,
Solicitors for Complainant.

And afterwards, to wit, on the 23rd day of November, A. D. 1893, came the marshal of the district to whom the aforesaid subpœna

was in form directed and returned the same into the clerk's office of said court, with his proceedings thereon endorsed in the words and figures following, to wit:

Marshal's Return of Subpœna in Chancery.

SOUTHERN DISTRICT OF OHIO, *Eastern Division,* } ss:

Received this writ at Columbus, Ohio, on November 23, 1893, and on the same day at Columbus, I executed said writ by serving a true copy thereof with the endorsements thereon on Ebe-
19 nezer W. Poe, auditor of the State of Ohio; John K. Richards, attorney general of the State of Ohio, and William T. Cope, treasurer of the State of Ohio, each personally.

J. H. SIMMONS,
U. S. Marshal, S. D. O.,
By C. P. WHITE, *Deputy.*

Fees: Total, $7.56.

And afterwards, to wit, on the 23rd day of November, A. D. 1893, came the marshal of the district to whom the aforesaid restraining order was in form directed and returned the same into the clerk's office of said court, with his proceedings thereon endorsed in the words and figures following, to wit:

Marshal's Return of Restraining Order.

SOUTHERN DISTRICT OF OHIO, *Eastern Division,* } ss:

Received this writ at Columbus, Ohio, on November 23, 1893, and on the same day at Columbus, Ohio, I executed said writ by serving a true copy thereof with the endorsements thereon on Ebenezer W. Poe, auditor of State of Ohio; John K. Richards, attorney general of State, and William T. Cope, treasurer of State of Ohio, each personally.

J. H. SIMMONS,
U. S. Marshal, S. D. O.,
By C. P. WHITE, *Deputy.*

Fees: Total, $7.56.

And afterwards, to wit, on the 20th day of December, A. D. 1893, the following demurrer was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

20 *Demurrer.*

Circuit Court of the United States for the Southern District of Ohio, Eastern Division.

THE WESTERN UNION TELEGRAPH COMPANY, a Corporation, &c., Complainant,
vs.
EBENEZER W. POE, Auditor of State of Ohio, *et al.*, Defendants.
} In Equity. No. 672.

The demurrer of the above-named defendants to the bill of complaint of the above-named complainant.

These defendants, by protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint contained to be true in such manner and form as the same are herein set forth and alleged, doth demur to the said bill. And for cause of demurrer showeth:

That it appeareth by the plaintiff's own showing by the said bill, that it is not entitled to the relief prayed by the bill against these defendants.

Wherefore and for divers other good causes of demurrer appearing on the said bill, these defendants do demur thereto. And they pray the judgment of this honorable court, whether they shall be compelled to make any answer to the said bill; and they humbly pray that said bill be dismissed with their reasonable costs in this behalf sustained.

J. K. RICHARDS,
Attorney General of Ohio.
THOS. McDOUGALL,
Sol. and of Counsel for D'f'ts.

I hereby certify that the foregoing demurrer is in my opinion well founded in point of law.

J. K. RICHARDS,
Of Counsel for Defendants.

THE STATE OF OHIO,
Franklin County, Southern District of Ohio, } *ss:*

Ebenezer W. Poe, being duly sworn, deposes and says: I am one of the above-named defendants. The foregoing demurrer is not interposed for delay.

EBENEZER W. POE.

21 Sworn to before me this 20th day of December, 1893.

JNO. L. LOTT,
[SEAL.] *Notary Public, Franklin County, Ohio.*

And afterwards, to wit, on the 20th day of December, A. D. 1893, the following affidavit of E. W. Poe was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Affidavit of E. W. Poe.

Affidavit of E. W. Poe—same as in No. 673—omitted from transcript by stipulation.

And afterwards, to wit, on the 14th day of March, A. D. 1894, the following conclusion of Judge Taft, was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Conclusion of Judge W. H. Taft.

Conclusion of Judge W. H. Taft—same as in No. 673—omitted from transcript by stipulation.

And afterwards, to wit, on the 31st day of March, A. D. 1894, an entry was made upon the journal of said court, clothed in the words and figures following, to wit:

Journal Entry—Journal B, p. 553.

Restraining Order to Continue in Force, &c.

This day came the complainants, and by leave of court first had, made certain amendments to its complaint by interlineation and marginal writing upon the face of the bill; and the complainant moved the court at the same time for leave to file its certain supplemental bill of complaint, which motion was granted, and said supplemental bill thereupon filed.

And it is now ordered by the court that the restraining order heretofore issued herein continue in force until the further order of this court.

22–50 And afterwards, to wit, on the 31st day of March, A. D. 1894, the following supplemental bill was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Supplemental Bill.

Circuit Court of the United States, Southern District of Ohio, Western Division.

THE WESTERN UNION TELEGRAPH CO. *vs.* E. W. POE, Auditor, *et al.* } Supplemental Bill of Complaint.

Now comes your orator, and humbly shows to the court that pursuant to the order of the court, entered subsequently to the filing of

the original bill herein, it has tendered in lawful money of the United States to each county treasurer in the State of Ohio wherein it owns property and transacts business, the full amount of all past-due taxes upon its real and personal property and income computed according to the current rate of taxation in the several counties, upon the method of valuation provided for by the statutes of the State of Ohio, in force up to and at the time of the adoption of the acts complained of in the original bill herein, together with the legal penalty of five per cent. and interest at the rate of six per cent. from the dates when said taxes severally become due.

Wherefore your orator humbly prays as in its original bill.

RAMSEY, MAXWELL & RAMSEY,
Solicitors for Complainant.

And afterwards, to wit, on the 23rd day of April, A. D. 1894, the following opinion of Judge Taft, was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

(Omitted in printing per stipulation of counsel, see side page 77.)

* * * * * * *

51 And afterwards, to wit, on the 2nd day of May, A. D. 1894, the following affidavit of C. E. Page was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Affidavit of C. E. Page.

Circuit Court of the United States, Southern District of Ohio, Eastern Division.

THE WESTERN UNION TELEGRAPH COMPANY
vs.
E. W. POE, Auditor, *et al.*
} Affidavit.

STATE OF OHIO, *Hamilton County,* } *ss:*

C. E. Page, being first duly sworn, states that he is manager of the complainant company; that pursuant to the order of this court said company did, prior to the date of the filing of the supplemental bill of complaint herein, to wit, prior to March 31, 1894, tender in lawful money of the United States to the treasurer of each county in the State of Ohio, in which said company owns property or does business, the full amount of all unpaid and past-due taxes upon its personal and real property, and upon all of its gross receipts within the State of Ohio, under the provisions in section 2778 of the Revised Statutes of Ohio, the amount tendered being computed at the current rate of taxation for each county under the law, as it existed at the time of the passage of the act known as the Nichols law, passed April 24, 1893, together with penalty of five per cent. upon the total amount of said taxes and six per cent. interest from the

dates when they severally became due. And further affiant saith not.

C. E. PAGE.

52 Sworn to before me and subscribed in my presence this 2nd day of May, 1894.

MORRISON R. WAITE,
Notary Public, Hamilton County, O.

And afterwards, to wit, on the 2nd day of May, A. D. 1894, an entry was made upon the journal of said court, clothed in the words and figures following, to wit:

Journal entry—Journal B, p. 557.

Entry Allowing Amendment to Supplemental Bill.

Upon application of the complainant leave is hereby granted it to file an amendment to its supplemental bill by inserting after the words, "the full amount of all past-due taxes upon its real and personal property and income" in said supplemental bill, the following words, to wit, "including all of its gross receipts upon business within the State of Ohio."

And afterwards, to wit, on the 2nd day of May, A. D. 1894, the following amendment to supplemental bill was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Amendment to Supplemental Bill.

Circuit Court of the United States, Southern District of Ohio, Western Division.

THE WESTERN UNION TELEGRAPH CO. *vs.* E. W. POE, Auditor, *et al.* } No. 672. Amendment to Supplemental Bill.

Now comes your orator and by leave of court first had, hereby amends its supplemental bill by inserting after the words,
53 "the full amount of all past-due taxes upon its real and personal property and income" the following words, to wit, "including all of its gross receipts upon business within the State of Ohio."

Wherefore your orator humbly prays as in its original bill.

RAMSEY, MAXWELL & RAMSEY,
Solicitors for Complainant.

And afterwards, to wit, on the 2nd day of May, A. D. 1894, an entry was made upon the journal of said court, clothed in the words and figures following, to wit:

Journal entry—Journal B, p. 557.

Entry Overruling Demurrer to Original and Supplemental Bill.

This cause coming on to be heard upon the demurrer to the original and supplemental complaints, was submitted to the court upon the arguments of counsel; and the court upon consideration thereof finds said demurrer not well taken and does overrule the same; to all of which the respondents except.

And afterwards, to wit, on the 7th day of September, A. D. 1894, the following order was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Order.

Circuit Court of the United States, Southern District of Ohio, Eastern Division.

THE WESTERN UNION TELEGRAPH COMPANY
vs.
E. W. POE, Auditor, *et al.*

To the clerk:

The defendants being in default for plea or answer, you will please enter an order in accordance with equity rules 18, that the bill be taken *pro confesso*.

RAMSEY, MAXWELL & RAMSEY,
Attorneys for Plaintiff.

54 And afterwards, to wit, on the 7th day of September, A. D. 1894, an entry was made upon the journal of said court, clothed in the words and figures following, to wit:

Order Book A, p. 130.

Decree pro Confesso.

It appearing that the defendants herein have been duly served with process of subpœna and having failed to plead, or answer to the bill of complaint, and are in default therefor, a decree *pro confesso* is hereby taken against the said defendants, and the allegations of the bill of complaint are taken as confessed and true.

And afterwards, to wit, on the 17th day of September, A. D. 1894, the following motion was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Motion.

Circuit Court of the United States.

THE WESTERN UNION TELEGRAPH COMPANY
vs.
E. W. POE, Auditor, *et al.* } No. 672.

Now come the defendants and move the court to set aside the decree *pro confesso* taken by complainant on the 7th day of September, 1894, and for leave to further plead in said cause and file herewith their affidavit according to the rules of this court.

J. K. RICHARDS,
Attorney General, and
THOS. McDOUGALL,
Att'y for Def'ts.

And afterwards, to wit, on the 17th day of September, A. D. 1894, the following papers, to wit:

Affidavit of George D. Hartmann.

Answer to motion and transcript of records supreme court of Ohio, the same as in case No. 673, all omitted as per stipulation.

55 And afterwards, to wit, on the 8th day of November, A. D. 1894, the following opinion, of Judge Taft, was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Opinion of Judge Taft, same as in No. 673, and omitted as per stipulation.

And afterwards, to wit, on the 8th day of April, A. D. 1895, the following opinion, of Judge Taft, was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Opinion of Judge Taft, same as in No. 673, omitted as per stipulation.

And afterwards, to wit, on the 3rd day of May, A. D. 1895, the following amendment to bill was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Amendment to Bill.

United States Circuit Court, Southern District of Ohio, Eastern Division.

THE WESTERN UNION TELEGRAPH COMPANY
vs.
E. W. POE *et al.* } No. 672. Amendment to the Bill.

The plaintiff, by leave of court, amends its bill and says that even if said act of the General Assembly of Ohio is valid, the said

assessment of $2,011,076.45 made against the plaintiff by the defendants is not valid, for the reason that the same was not made in accordance with law, nor upon the basis of the true value in money of the plaintiff's property in the State of Ohio, as appears by the proceedings of the board upon the plaintiff's returns.

RAMSEY, MAXWELL & RAMSEY,
Attorneys for Plaintiff.

56 And afterwards, to wit, on the 3rd day of May, A. D. 1895, an entry was made upon the journal of said court, clothed in the words and figures following, to wit:

Journal entry—Journal C, p. 35.

Amendment to Bill Filed, Demurrer Sustained, Injunction Dissolved, Appeal Allowed, and Orders as to Transcript.

This day came the plaintiff and by leave of court, filed the further amendment of its bill, the defendants agreeing upon the consideration of the demurrer to the bill as so amended and of the motion to dissolve the injunction the plaintiff shall have the benefit of the averments of the bill, and also of the statements set forth in Exhibit "B" to the bill and in the affidavit of the defendant Poe filed December 20, 1893, and the proceedings of the board thereto attached, the same as if incorporated into the bill by amendment.

And thereupon the motion to dissolve the injunction and the demurrer to the bill as amended and supplemented, are submitted to the court under said stipulation; on consideration whereof the court grants said motion and sustains said demurrer. The injunction is accordingly dissolved and the bill dismissed at the cost of the plaintiff. Thereupon the plaintiff presented its petition for appeal to the United States circuit court of appeals for the sixth circuit; and its assignment of errors, and the appeal is allowed in open court, and the appeal bond fixed at $500.00. Upon the application of the plaintiff it is ordered that the order dissolving the injunction be and the same is hereby suspended pending the appeal, until or unless otherwise ordered by the circuit court of appeals, but upon condition that the appeal shall be docketed forthwith so that it may be heard at the May session of the circuit court of appeals.

It is further ordered by agreement, if the case of the Adams Express Company, No. 673, be also appealed that in making the transcripts of record for appeal, the documents and opinions common to both cases may be omitted from one of the transcripts. It is also ordered that the schedules attached to Exhibit "B" may be omitted from the transcript, inasmuch as the figures are summarized in the record of the proceedings of the State board attached to Mr. Poe's affidavit.

57 And afterwards, to wit, on the 3rd day of May, A. D. 1895, the following petition for appeal and assignment of errors was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Petition for Appeal and Assignment of Errors.

United States Circuit Court, Southern District of Ohio, Eastern Division.

THE WESTERN UNION TELEGRAPH COMPANY *vs.* EBENEZER W. POE, JOHN K. RICHARDS, AND WILLIAM T. COPE. } No. 672. Petition for Appeal and Assignment of Errors.

The plaintiff prays an appeal from the final decree of this court to the United States circuit court of appeals for the sixth circuit, and assigns for error:

1. That said act of the General Assembly of the State of Ohio, passed April 27, 1893, is in contravention of the Constitution of the United States, especially of the interstate-commerce clause of section 8, article 1; of section 2, article 4, and of section 1, article 14.

2. That said act is in contravention of the constitution of the State of Ohio, especially of sections 2 and 5 of article 12, and of section 1 of article 2.

3. That said act does not provide a method for the taxation of the property of telegraph and express companies according to its true value in money, as required by the constitution of the State, or by uniform rule, as compared with other property in the State, but is really an attempt to enforce against express and telegraph companies the principal business of all those doing business in the State of Ohio and in the United States being interstate commerce the payment of a tax for the privilege of doing such business in such State, by placing a fictitious value upon their property.

58 4. That said assessment made by the defendants against the plaintiff was not upon the valuation of the true value in money of the plaintiff's property in the State of Ohio, or upon any estimate of the value of the company's telegraph lines in Ohio, considered as property, but altogether upon the basis of other considerations, chiefly the market value of the plaintiff's capital stock; that the defendants estimated the total capital stock of the plaintiff company, to wit: 9,408 1-5 shares at the market value of the shares, to wit, $87 per share, making $81,780,713.40 and deducted from such sum the plaintiff's investment in bonds and stocks of other companies and the value of its real estate outside of Ohio, altogether $13,646,556.76, leaving $69,134,156.64 as a balance which the defendants apportioned in the proportion of the length of the plaintiff's lines in Ohio to the whole length in miles of its lines throughout the world, including its cable lines, as the said assessment against the plaintiff, claiming and pretending that the sum so assessed represents the true value in money of the plaintiff's telegraph lines within the State of Ohio; whereas said sum bears no relation to the true value in money of said lines, and is nothing but an arbitrary apportionment of the sum of the market value of the

plaintiff's shares, without any reference whatever to the money or market value of the plaintiff's lines in Ohio.

5. That said suit of State *ex rel. vs.* Jones, auditor of Lucas county, in the supreme court of Ohio, was gotten up by the defendants in this suit during the pendency of the suit, and after the question as to the validity of the said act of the General Assembly of the State of Ohio had been argued and was ordered for reargument in this suit, for the purpose of anticipating the judgment of this court upon the said questions, and of any Federal court to which the case might be taken on appeal, and of controlling the decision of the Federal courts upon the questions involved; there being in fact no real controversy or subject-matter of controversy upon which to base such suit. And this court erred in withdrawing its original opinion upon the question of the constitutionality of said act and in adopting said opinion of the supreme court of Ohio.

6. That the court erred in sustaining the demurrer to the bill, as amended and supplemented, and in dismissing the bill.

7. That the court erred in granting motion to dissolve the temporary injunction.

59 The plaintiff prays for an order suspending the order dissolving the temporary injunction pending the appeal.

RAMSEY, MAXWELL & RAMSEY,
Plaintiff's Attorneys.

And afterwards, to wit, on the 3d day of May, A. D. 1895, the following supersedeas bond was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Supersedeas Bond.

Know all men by these presents that The Western Union Telegraph Company, as principal, and I. N. Miller, as surety, are held and firmly bound unto the defendant- in the case of The Western Union Telegraph Company *vs.* E. W. Poe *et al.*, No. 672, United States circuit court, southern district of Ohio, eastern division, their executors, administrators, and assigns, in the sum of five hundred dollars ($500); for the payment of which, well and truly to be made, they bind themselves, their successors, administrators, and executors, jointly and severally, by these presents.

Dated this third day of May, in the year of our Lord one thousand eight hundred and ninety-five.

60 Whereas the above-named The Western Union Telegraph Company has prosecuted an appeal to the United States circuit court of appeals for the sixth circuit to reverse a decree rendered by the circuit court of the United States for the southern district of Ohio, eastern division, in said case of The Western Union Telegraph Company, plaintiff, *vs.* E. W. Poe *et al.*, defendants:

Now, therefore, the condition of this obligation is such that if the said The Western Union Telegraph Company shall prosecute said appeal to effect and answer all damages and costs if it fail to make

said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

THE WESTERN UNION TELEGRAPH COMPANY,
By LAWRENCE MAXWELL, JR., *Att'y.*
I. N. MILLER.

61 THE UNITED STATES OF AMERICA, } ss:
Southern District of Ohio, Eastern Division, }

I, Benjamin R. Cowen, clerk of the circuit court of the United States of America within and for the division and district aforesaid, do hereby certify that the foregoing is a true and complete transcript in accordance with the final entry and as the same appears of record and on file in the clerk's office of said court.

In testimony whereof I have hereunto set my hand and [SEAL.] affixed the seal of said court, at the city of Columbus, Ohio, this 16th day of May, A. D. 1895.

B. R. COWEN, *Clerk,*
By JANIE W. F. COWEN,
Deputy Clerk.

62 And afterwards, to wit, on May 21st, 1895, an order was made and entered upon the minutes of this court, clothed in the words and figures following, to wit:

United States Circuit Court of Appeals for the Sixth Circuit.

WESTERN UNION TELEGRAPH CO. *vs.* E. W. POE *et al.*	No. 323. Appeal from the Circuit Court of the United States for the Southern District of Ohio.

This day came the attorney general of the State of Ohio and moved that the above-entitled case be continued until the October term; to which counsel for the appellants object unless the attorney general stipulates that the assessments against the appellants for the year 1895 shall not be certified to the county auditor pending the decision of this court on this appeal.

And thereupon said motion of the attorney general is overruled, and it is ordered that the case be set for argument at the foot of the calendar for the June session unless continued meantime by stipulation in accordance with the appellants' suggestion aforesaid.

And afterwards, to wit, on June 4th, 1895, the following order was entered upon the minutes of said court, clothed in the words and figures following, to wit:

United States Circuit Court of Appeals for the Sixth Circuit.

WESTERN UNION TELEGRAPH CO. *vs.* E. W. POE *et al.*	No. 323. Appeal from the Circuit Court of the United States for the Southern District of Ohio.

63–67 This cause came on to be heard and was argued in part by Mr. Lawrence Maxwell, Jr., for the appellants and Mr. Thomas McDougall for the appellees, and the hearing was continued until tomorrow.

And afterwards, to wit, on June 5th, 1895, there was entered on the minutes of said court the following order, to wit:

United States Circuit Court of Appeals for the Sixth Circuit.

WESTERN UNION TELEGRAPH CO. *vs.* E. W. POE *et al.*	No. 323. Appeal from the Circuit Court of the United States for the Southern District of Ohio.

This cause came on to be further argued this day and was argued by Mr. J. K. Richards, attorney general of Ohio, for the appellees and by Mr. Lawrence Maxwell, Jr., for the appellants and was submitted to the court.

And afterwards, to wit, on July 15th, 1895, the court delivered an opinion in said cause, which is in the words and figures following, to wit:

(Omitted in printing per stipulation of counsel. See side page 77.)

* * * * * * *

68 And afterwards, on the same day, to wit, on July 15th, 1895, the following decree was entered in said cause, which reads and is in the words and figures following, to wit:

United States Circuit Court of Appeals for the Sixth Circuit.

WESTERN UNION TELEGRAPH CO. *vs.* E. W. POE *et al.*	No. 323. Appeal from the Circuit Court of the United States for the Southern District of Ohio.

This cause came on to be heard on the transcript of record from the circuit court of the United States for the southern district of Ohio and was argued by counsel.

On consideration whereof it is now here ordered, adjudged, and decreed that the decree of the circuit court in this cause be, and the same is hereby, affirmed with costs.

And afterwards, to wit, on August 3rd, A. D. 1895, a petition for appeal and an assignment of errors were filed in this court, which read and are in the words and figures following, to wit:

United States Circuit Court of Appeals for the Sixth Circuit.

WESTERN UNION TELEGRAPH COMPANY *vs.* EBENEZER W. POE *et al.* } No. 323. Petition for Appeal and Assignment of Errors.

The appellant prays an appeal from the decree of this court, affirming the decree of the circuit court of the United States
69 for the southern district of Ohio, and assigns for error:

1. The several assignments of error set out in the assignment of errors before this court.

2. That this court erred in affirming the decree of the circuit court and should have reversed the same.

3. That the assessment complained of is not in fact an assessment against the appellant in respect of its property held or owned by it in the State of Ohio or within the taxing jurisdiction of the State of Ohio, but is really an attempt to enforce against the appellant, under the guise of taxing its property within the State, the payment of a tax upon its business, which is largely interstate commerce, or for the privilege of doing such business in this State by placing a fictitious and artificial value upon its property, and the appellant insists that said assessment and the statute of Ohio purporting to authorize the same are therefore in contravention of the Constitution of the United States, and especially of the interstate-commerce clause of section 8, article 1; section 2, article 4, and of section 1, article 14.

The appellant also prays for an order continuing the temporary injunction ordered by the circuit court pending the appeal in the Supreme Court of the United States.

LAWRENCE MAXWELL, JR., *Counsel.*

Appeal allowed, supersedeas fixed at $20,000.00, and it is ordered that the injunction granted by the circuit court continue in force, pending the appeal in the Supreme Court of the United States, until or unless otherwise ordered by the Supreme Court.

HORACE H. LURTON,
Circuit Judge and Judge U. S. C. Appeals for 6th Circuit.

Aug. 1, 1895.

70 And afterwards, on the same day, to wit, August 3rd, A. D. 1895, the following order was entered upon the minutes of said court, which reads and is in the words and figures following, to wit:

United States Circuit Court of Appeals for the Sixth Circuit.

WESTERN UNION TELEGRAPH CO. *vs.* E. W. POE *et al.*	No. 323. Appeal from the Circuit Court of the United States for the Southern District of Ohio.

Upon presentation of petition for appeal to the Supreme Court of the United States and assignment of errors it is hereby ordered as follows, to wit:

Appeal allowed, supersedeas fixed at $20,000.00, and it is further ordered that the injunction granted by the circuit court continue in force, pending the appeal in the Supreme Court of the United States, until or unless otherwise ordered by the Supreme Court.

71 And afterwards, to wit, on August 7th, A. D. 1895, the following bond was filed in this cause, which reads and is in the words and figures following, to wit:

United States Circuit Court of Appeals for the Sixth Circuit.

WESTERN UNION TELEGRAPH CO. *vs.* E. W. POE *et al.*	No. 323. Appeal from the Circuit Court of the United States for the Southern District of Ohio.

Supersedeas Bond.

Know all men by these presents that The Western Union Telegraph Company, as principal, and C. E. Page and I. N. Miller, as sureties, are held and firmly bound unto the appellees in the case of The Western Union Telegraph Company, appellant, *vs.* E. W. Poe *et al.*, appellees, No. 323 in the United States circuit court of appeals for the sixth circuit, their executors, administrators, and assigns, in the sum of twenty thousand dollars; for the payment of which, well and truly to be made, they bind themselves, their successors, administrators, and executors, jointly and severally, by these presents.

Done this first day of August, in the year of our Lord one thousand eight hundred and ninety-five.

Whereas the above-named Western Union Telegraph Company has prosecuted an appeal to the Supreme Court of the United States to reverse a decree rendered by the United States circuit court of appeals for the sixth circuit in said case of The Western Union Telegraph Company, appellant, *vs.* E. W. Poe *et al.*, appellees:

No-, therefore, the condition of this obligation is such that if the said Western Union Telegraph Company shall prosecute said ap-

peal to effect and answer all damages and costs if it fail to
72 make said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

THE WESTERN UNION TELEGRAPH COMPANY,
By LAWRENCE MAXWELL, JR.
C. E. PAGE.
I. N. MILLER.

Accepted and approved.

H. H. LURTON, *Judge.*

August 1st, 1895.

73 The Supreme Court of the United States to Ebenezer W. Poe, auditor of the State of Ohio; James M. Wittemeyer, Phillip Walther, Cloyd Manfield, Dwight Crowell, Augustus J. Frame, Joseph A. Henderson, H. L. Jennings, Frank X. Duerr, George S. Tinlin, Colin McDonald, Luther F. Young, Newton Speckman, Reuben Stahle, C. C. Schellentrager, Lewis C. Kilpstine, Lyman B. Lewis, R. F. Brown, T. J. Lindsay, Wm. H. Halliday, J. W. Jones, W. R. Baker, J. E. McClelland, John Hagerty, Madison M. Thompson, Henry J. Forker, James Reese, Nelson Armstrong, James R. Leeper, Alfred C. Blackburn, John M. Blocher, William D. Corn, William Bell, Jr., Charles H. Jones, W. D. Wilson, Conrad F. Benner, Boyd E. Furnas, W. T. Wood, H. W. Lewis, Lewis O. Cooper, Lewis F. Parsons, James N. Carr, Charles C. Guy, T. J. Morris, John T. Adams, S. R. Freeman, W. J. Johnson, W. A. Eidson, John P. Seward, P. White Brown, John Fangboner, Joseph T. Tracey, William Schlosser, Louis A. Loichot, John Grether, E. P. McCrocle, Edgar A. Walter, Samuel Hudson, James H. Cline, W. D. Gold, W. A. Patterson, Henry Marshall, Theodore W. Parker, I. N. Walker.

74 The Supreme Court of the United States to Ebenezer W. Poe, auditor of the State of Ohio; John K. Richards, attorney general of the State of Ohio, and William T. Cope, treasurer of the State of Ohio, Greeting:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States, to be holden at the city of Washington, in the District of Columbia, on the 1 day of Sept. next, pursuant to an appeal filed in the clerk's office of the United States circuit court of appeals for the sixth circuit, wherein The Western Union Telegraph Company is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant, as in the appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 1 day of Aug., in the year of our Lord one thou-

sand eight hundred and ninety-five, and of the Independence of the United States of America the one hundred and —.

HORACE H. LURTON,
Circ. Judge and Judge U. S. C. Appeals, 6th Circuit.

Aug. 1, 1895.

Receipt of a copy of the foregoing acknowledged August 28, 1895.

J. K. RICHARDS,
Attorney General.

75 United States Circuit Court of Appeals for the Sixth Circuit.

I, Frank O. Loveland, clerk of the United States circuit court of appeals for the sixth circuit, do hereby certify that the foregoing is a true and correct copy of the record, together with the original citation, in the case of The Western Union Telegraph Company *vs.* Ebenezer W. Poe, auditor of the State of Ohio, *et al.*, No. 323, October term, 1894, as the same remains upon the files and records of said United States circuit court of appeals for the sixth circuit and of the whole thereof.

Seal United States Circuit Court of Appeals, Sixth Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals for the sixth circuit, at the city of Cincinnati, Ohio, this eighteenth day of September, 1895.

FRANK O. LOVELAND,
Clerk of the United States Circuit Court of Appeals for the Sixth Circuit.

76 [Endorsed:] United States circuit court of appeals for the sixth circuit. Western Union Telegraph Company *vs.* Ebenezer W. Poe, auditor of the State of Ohio, *et al.* Certificate for copy of record.

77 Supreme Court of the United States, October Term, 1896.

HENRY SANFORD, President, etc., *vs.* E. W. POE, Auditor, etc. } No. 337.

HENRY SANFORD, President, etc., *vs.* E. W. POE, Auditor, etc. } No. 338.

JAMES C. FARGO, President, etc., *vs.* E. W. POE, Auditor, etc. } No. 339.

THOMAS C. PLATT, President, etc., *vs.* E. W. POE, Auditor, etc. } No. 340.

WESTERN UNION TELEGRAPH COMPANY *vs.* E. W. POE, Auditor, etc. } No. 352.

Stipulation.

The appellants propose to print in a separate pamphlet all of the opinions delivered in these cases in the circuit court and in the circuit court of appeals, also the opinion of the supreme court of Ohio in the case of State *ex rel. vs.* Jones, and also the Ohio taxing statutes of 1893 and 1894 involved in these cases. It is therefore agreed that the various opinions and statutes may be omitted in the printing of the records.

LAWRENCE MAXWELL, JR.,
Counsel for Appellant.
FRANK S. MONNETT,
Attorney General of Ohio.
J. K. RICHARDS,
Of Counsel for Appellees.

(Endorsed:) Case No. 16,027, &c. Supreme Court U. S., October term, 1896. Term Nos., 337, 338, 339, 340, & 352. Sanford, pres't, *v.* Poe, auditor; Same *v.* Same; Fargo, pres't, &c., *v.* Poe, auditor; Platt, pres't, *v.* Poe, auditor; W. U. Tel. Co. *v.* Poe, auditor. Stipulation to omit parts of record in printing. Filed July 10, 1896.

Endorsed on cover: Case No. 16,045. U. S. circuit court of appeals, sixth circuit. Term No., 352. The Western Union Telegraph Company, appellant, *vs.* Ebenezer W. Poe, auditor of the State of Ohio, *et al.* Filed September 30th, 1895.